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REPORT FOR THE COALITION OF DISABILITY SECTOR NGO'S FOR UPR - KENYA

This report has been prepared by nine organizations of/for persons with disabilities that work on the promotion and protection of human rights in Kenya. The process of developing the report was guided by the technical support of the Kenya National Commission on Human Rights (KNCHR) which is the National Human Rights Institution of Kenya accredited with an 'A' Status for its compliance with the Paris Principles. The preparation of this report was through a broad consultative process drawing from work and experiences of the organizations in the Coalition.

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Action for Children with Disabilities (ACD) is a membership network comprising of more than 20 Civil Society Organizations (CSOs) and relevant government institutions working together to build an inclusive society where children with disabilities have equal access to education, health, and social protection services in Kenya. The network’s secretariat is hosted at Sense International Kenya Office.



Users & Survivors of Psychiatry in Kenya (USP-K): USP-K is a non- governmental membership organization which was registered in 2007 with the key objective of promoting and advocating for the rights of persons with psychosocial disabilities.



CRESNET is a child rights focused organization dedicated to contribute to the realization of the rights of children in Kenya. We focus our work on policy and legislation advocacy, child rights governance, social accountability and developing the capacity of right holders to claim their rights and duty bearers to provide for the rights of children.



Humanity & Inclusion (HI): Formerly known as Handicap International, Humanity & Inclusion is an NGO that has since expanded its mission to supports people with disabilities and other vulnerable populations living in conflict and disaster zones and in situations of exclusion and extreme poverty.



Action Network for the Disabled (ANDY): ANDY is a National Disabled Persons Organization that focuses on empowering youth with disabilities with entrepreneurial and employability skills to enable them earn a sustainable income and therefore lead independent lives as well as contribute to national development.



Positive Exposure- Kenya (PE-Kenya): PE-Kenya is a non-profit organization that exists to promote the well-being of persons with albinism (PWA) by providing an opportunity for PWA, their families and communities to celebrate diversity, challenge stigma and celebrate each individuals’ extraordinary uniqueness, implementing appropriate sustainable projects across thematic programs on Awareness & advocacy, socio-economic empowerment & social protection.



Kenya Association of the Intellectually Handicapped (KAIH): KAIH is a family based organization which was started in 1996 by a group of families of persons with Intellectual disabilities, their teachers and persons with Intellectual disabilities. The aim was to create awareness on intellectual disability and the difficulties families and their self-advocates go through in accessing public services, living in the community and being included in all aspects of life.



Kenya National Association of the Deaf (KNAD): KNAD is an organization working towards promoting and protecting the rights of the deaf in Kenya.



United Disabled Persons of Kenya (UDPK): UDPK is an umbrella organization for persons with disabilities and it is composed of over 200 memberships of Organizations for Persons with Disabilities. Its mandate is to advocate for the rights of persons with disability so that they share an equal platform and enjoy their rights across all sectors of development.

INTRODUCTION

1. Kenya was reviewed in the 2nd cycle of the Universal Periodic Review in 2015. Kenya received a total of 253 recommendations of which 192 were supported and 61 were noted. Notably two recommendations touching on the rights of persons with disabilities were made to Kenya i.e. one recommendation calling for the ratification of Optional Protocol to the Convention on the Rights of Persons with Disabilities (which was noted) and one recommendation on poverty eradication for women, children and persons with disabilities (which was supported).
2. The Government of Kenya in 2018 co-hosted the Global Disability Summit with Government of the United Kingdom and International Disability Alliance where commitments were made towards tackling stigma and discrimination, work toward ensuring inclusive education and employment for all and harness technology innovation and assistive devices for persons with disabilities. This report gives status update on the themes of stigma and discrimination, inclusive education, economic empowerment and access to justice

STIGMA AND DISCRIMINATION

Persons with disabilities face widespread stigma and discrimination due to partial enforcement of and non-compliance with the universal access design standards for accessing the physical environment, information and communication, and social services provided to the public.

3. Physical, environmental, information and communication barriers prevent persons with disabilities from living independently and participating fully and on an equal basis with others in society.¹ Persons with Disabilities Act (2003) provides that persons with disabilities have the right to a barrier free environment which includes access to public

buildings and public transportation.² The Act further requires proprietors of public buildings to adjust their buildings within five years of coming into operation of the Act to ensure accessibility for persons with disabilities. This provision is yet to be realized as both public and private transport remains inaccessible countrywide. An assessment of public and private building in 12 counties in 2013 by the Kenya National Commission on Human Rights (KNCHR) confirmed that physical access for persons with disabilities remains low. Inaccessibility was in the form of staircases, steep ramps, narrow doors and non-accommodative lifts especially for the blind.³ The same report noted that persons with disabilities often complain of discrimination and not being treated with dignity by public service operators.⁴

4. The National Council for Persons with Disabilities (NCPWD) is empowered to issue adjustment orders where it considers premises, service or amenities are inaccessible to persons with disabilities. The NCPWD lacks capacity to issue and enforce adjustment orders. Universal design has not been embraced as an overarching principle in the provision of goods, services and facilities. The country has not defined accessibility standards and guidelines as well as national and county government stakeholders who have a role in enforcing compliance with universal design in the built environment and transportation.

Recommendations

- (i) The State should put in place an action plan outlining positive measures to be implemented in ensuring access to goods, services, built environment and transportation.
- (ii) The State in collaboration with organizations for/of persons with disabilities should build capacity of stakeholders on universal design principles to enhance accessibility for all.
- (iii) Establish a multi-sectoral mechanism to issue and enforce adjustment orders to proprietors of premises, service or amenities found inaccessible to persons with disabilities
- (iv) The State should define minimum standards and guidelines for accessibility to facilities, goods and services provided to the public by 2022.

Persons with disabilities encounter challenges accessing broadcast content in media stations.

5. The Constitution of Kenya entitles persons with disabilities to reasonable access to information, the use of sign language, braille and other appropriate means of communication and access to assistive devices for all types of disabilities.⁵ The Persons with Disabilities Act further requires all television stations to provide sign language insets or subtitles in all newscasts and educational programs, and in all programs of national importance.⁶ However, these provisions have not been fully implemented in Kenya. Currently national news and parliamentary proceedings are disseminated through small sign language insets, making it difficult for deaf persons to follow proceedings.⁷ There are no subtitles, captions and signing for other broadcast content such as breaking news, entertainment shows and advertisements etc.

Recommendations

- (i) Adopt and implement the Draft National ICT policy, 2016 which requires content producers for distribution and public consumption in Kenya produce such content in accessible formats such as audio description, audio subtitles, captions and signing for access to persons with disabilities.
- (ii) Enact the Persons with Disabilities Bill 2018 and ensure it broadens the obligation of content producers to produce content that is in accessible formats for all types of disabilities.

Persons with disabilities have challenges in accessing government services in public institutions.

6. KNCHR in its monitoring report on implementation of the Convention on the Rights of Persons with Disabilities (CRPD) observed that very few institutions including health centers, schools, and courts have accessible formats of communication.⁸

7. Notably, the Persons with Disabilities Act heavily caters for the rights of blind and deaf persons in accessing information. It does not provide for alternative modes of communication for persons with intellectual disabilities and those who are deaf-blind.

Recommendation: Fast track the enactment of the Persons with Disabilities Bill (2018) approved by Cabinet in August 2018 which obligates public institutions to provide information in accessible formats and technologies appropriate to different kinds of disabilities.

Non-Compliance of the Persons with Disabilities Act, Penal Code, Marriage Act, and Evidence Act with the Convention on the Rights of Persons with Disabilities.

8. The Persons with Disabilities Act was enacted in 2003 before Kenya ratified the Convention on the Rights of Persons with Disabilities in 2008. The Act has also not been aligned to the Constitution of Kenya, 2010. It is more aligned to a medical approach towards provisions of services to persons with disabilities instead of embracing a human rights based approach. There have been several attempts to amend the bill but the process has taken long to complete. The Cabinet in 2018 approved Persons with Disabilities Bill 2018 but the same is yet to be tabled before Parliament for discussion. The Bill expected to be tabled before Parliament has undergone wider stakeholder consultation and is largely in compliance with the Convention on the Rights of Persons with Disabilities.

Recommendation: Fast track the enactment of the Persons with Disabilities Bill (2018) and accompanying regulations.

9. Section 125(2) of the Act upholds that witnesses with intellectual or psychosocial disabilities are competent to give evidence in a court of law if the condition does not prevent the person from understanding questions or giving rational answers to them. However due to preconceived prejudices and biases by the criminal justice system these witnesses encounter barriers in testifying or otherwise participating in the criminal justice system.⁹ In practice, persons with intellectual and psychosocial disability are deemed not

to have the legal capacity to testify in a court of law.¹⁰ The section fails to recognize the role of offering supports in order to exercise the right to legal capacity for persons with disabilities.¹¹ More so, the section does not also recognize the duty of the court to provide procedural and age appropriate accommodations at different stages of the trial.¹² This leads to a situation where courts are unable to convict suspects of offences where a person with psychosocial or intellectual disability is the sole witness or victim because their evidence is considered inadmissible in a court of law.¹³

Recommendation: Amend sections of the Evidence Act, to provide for age appropriate and procedural accommodations to enable persons with difficulties with communication to provide evidence.

10. The Marriage Act, 2014 does not allow persons with psychosocial or intellectual disabilities the right to marry and divorce on an equal basis with others. Section 12 (a) (ii) of the Act provides that marriages are voidable on the basis of insanity and Section 73 (1) (g) of the Act goes on to provide for insanity as grounds of annulment of marriage.

Recommendation: Amend section 12 (a) (ii) and section 73 (1) (g) of the Marriage Act to recognize the right of persons with intellectual or psychosocial disability to marry and divorce on an equal basis with others.

**Use of derogatory terms referring to persons with disabilities in
Constitution and legislations.**

11. The Constitution of Kenya, 2010 and other legislation including the Penal Code¹⁴ uses derogatory language that refers to persons with intellectual or psychosocial disabilities as ‘imbeciles’, ‘idiots’, ‘person with mental disorders’, ‘retarded’ or ‘lunatics’.¹⁵ These sections of the law are in violation of article 3 (a) of the Convention on the Rights of Persons with Disabilities and article 28 of the Constitution of Kenya.¹⁶ The Government in its National Action Plan on implementation of recommendations of the Committee on the Rights of Persons with Disabilities had committed to repeal or amend the impugned

sections that use derogatory language against persons with disabilities by December 2016.¹⁷ This is yet to be done.

Recommendation: The State should with immediate effect amend or repeal legislation that includes derogatory language against person's disabilities.

INCLUSIVE EDUCATION

Lack of clarity on the government's approach to inclusive education and ambiguity of the means through which it will be achieved

12. In an effort to ensure inclusion of learners with disabilities in education, the government has put in place the Sector Policy for Learners and Trainees with Disabilities (2018) which recognizes the need for the country to move towards inclusive education, instead of segregated education. However, there is no clarity on the definition of inclusive education, the desired model to be adopted or roadmap to guide the shift towards inclusive education. According to the policy, inclusive education becomes an overarching principle, advocating for the right of every learner with disability to be enrolled in regular classroom together with his or her peers without disabilities. This does not portray inclusive education as a programme area or an education model that needs to be adequately planned for and resourced but rather a principle to be taken into consideration when planning or resourcing education programmes. Currently the government uses the integration model¹⁸ for planning, resourcing and delivery of education services to learners with disabilities in primary schools. This is still a form of segregation and contravenes Article 24 of the CRPD.

Recommendation: In compliance with Article 24 of the CRPD, the Ministry of Education ought to clearly define the government's approach to inclusive education, models to be used and timeline for transition from integration to inclusive models for delivery of education to learners with disabilities across all levels of basic education.

Negative attitudes of teachers and education personnel towards inclusive education

13. Although teacher education in Kenya currently models teachers on how to accommodate diverse needs in a classroom, this is a new phenomenon as previously they were trained to teach in special education programmes following the tenets of the medical model of service delivery. This has created attitudes regarding the separate education of learners with disabilities that have become strongly embedded in the Kenya teaching culture and reorienting such teachers according to Danohue and Bornman, (2014) to new ways of educating learners after many years in the profession remains a significant challenge to inclusive practice¹⁹. Based on this it would appear that the pace of the state has been slow in the realization of inclusive education.

Recommendations

- (i) Capacity building on inclusive education approaches should be organized for teachers, Curriculum Developers, Education Administrators, Quality Assurance Standards Officers (QASO) and the Examination Councils officers.
- (ii) Kenya Institute of Special Education (KISE) should rebrand to become a champion for inclusive education and their teacher training curriculum re-engineered towards preparing more teachers to teach in inclusive schools and tertiary institutions such as technical colleges.

There is no accurate data in Kenya on children with disabilities and special needs in or out of school.

14. The Kenya National Special Needs Education Survey Report (2016)²⁰ indicated that in 1999, there were only 22,000 learners with special needs and disabilities enrolled in special schools, units and integrated programs. In 2003, when FPE was introduced, the number had risen by 22 percent to 26,885 and subsequently increased by 67percent to reach 45,000 in 2008. The Global Monitoring Report report by UNESCO (2010) indicates that in 2003 there were 86,424 children with disabilities in school: 13,303 enrolled in special schools

and 73,121 in special units and integrated programs while in 2008, the numbers were 37,202 in special schools and 171,079 in special units giving a total of 208, 281. In total, there were 234,153 learners with special needs and disability in schools, of which 222,727 were enrolled in primary and the rest, 11,426 were enrolled in secondary schools. The different sources of data give contradicting numbers of children with disabilities in school and miss out data on learners with disabilities who are out of school or those that are in home based learning programmes. Lack of accurate data on learners with disabilities continue to hamper effective planning and budgeting for delivery of quality education services for children with disabilities in the country.

Recommendation: The government should carry out a national census to determine the number of learners with disabilities in and out of school including those that are in home based learning programmes. The data disaggregated on the type of disability, gender and age should be made available to all stakeholders to inform effective planning and budgeting for learners with disabilities.

Inadequate capitation for learners with disabilities

15. At the primary level, the government provides an annual capitation of Ksh1, 422 to each child and a top up of Ksh2, 300. In secondary level, Ksh57, 974 is given annually to learners enrolled in secondary schools. The current figures represent a very small increase from the initial amounts set in 2003 when Kenya introduced free primary and day-secondary schooling. Since 2003, it is not clear the criteria the government uses to arrive at the amount of capitation allocated to the learners with disabilities. For instance the capitations does not take into consideration the type of disability, the individual needs of the learner, support services and personnel required etc. It is a blanket figure for all! The Sector Policy²¹ statement on financing and sustainability, indicates that, the Ministry of Education shall continuously review and increase budgetary allocation to institutions and programmes. It is important to have the reviews and budget allocations be based on established unit cost of educating a learner with disability

Recommendation: The government should develop a differentiated unit cost for educating learners with different types of disabilities. The unit cost should take into account the type of disabilities, individual needs of learners including costs for provisions of support services such as occupational therapy, speech therapy, provision of appropriate devices and learning materials, etc. The unit cost should be basis for planning and budgeting for learners with disabilities.

ECONOMIC EMPOWERMENT

Low access to Government Procurement Opportunities by persons with disabilities.

16. The Government of Kenya has provided access to government procurement opportunities to persons with disabilities. Section 157 (10) of the Public Procurement and Asset Disposals Act (2015) provides that at least 30% of government procurement opportunities in every financial year should be allocated to women, youth and persons with disabilities.
17. However, reports by the Public Procurement Oversight Authority shows that in the 2015/16 financial year only 8% of contracts were awarded to persons with disabilities with women recording the largest percentage of 50%²² followed by the youth who were awarded 42%.²³ Further out of 31,889 companies which have been certified to benefit from Access to Government Procurement Opportunities only 1652 companies are registered and certified for persons with disabilities category.²⁴
18. Minimal participation and access to economic opportunities by persons with disabilities has been occasioned by lack of awareness of the existing government procurement opportunities; lack of skills to tender for government contracts and complex procurement procedures which are burdensome and costly especially for new entities.²⁵ This has resulted in low uptake of the government procurement opportunities by persons with disabilities.
19. The National Council for Persons with Disabilities provides Local Purchase Order (LPO) financing to persons with disabilities²⁶ however details on the modalities of application and disaggregated data on budget allocation, number of beneficiaries and total amounts disbursed towards supporting persons with disabilities is not publicly available.
20. It has been reported that the Access to Government Procurement Opportunities (AGPO) process has low levels of equity and fairness due to allegations of demands for bribes in exchange for contracts²⁷ that the owners of companies certified under the persons with

disabilities category are not persons with disabilities bringing to question modalities for verification.²⁸ Further it has been noted that there is a lack of transparency in providing feedback to entities that have applied for AGPO opportunities and in the provision of disaggregated information regarding contractual amounts awarded to individual companies listed under AGPO and its directors, the specific ministry, department or agencies awarding contracts under AGPO.

21. In a study carried by Hivos East Africa on the impact of Kenya's efforts to empower women, youth and persons with disabilities through public procurement, it was noted that the quality of tenders offered to women, youth and persons with disabilities is often aligned to minimal technical capacities and manual work resulting to low profit margins.²⁹ This is informed by the perception that women, youth and persons with disabilities do not have the capacity to handle contracts of significant value which are awarded to established companies. Challenges encountered in implementation of AGPO also include late payment for goods, services and works which leads to debt and erodes benefits made contrary to the objectives of AGPO.

Recommendations

- (i) The State should carry out awareness raising and capacity building targeted towards persons with disabilities in consultation with organizations for and of persons with disabilities on AGPO.
- (ii) The State should proactively disclose modalities of application and disaggregated data on budget allocation for LPO financing, number of beneficiaries, and total amounts disbursed to persons with disabilities in line with the Access to Information Act, 2016.
- (iii) The State should proactively disclose information and provide feedback to tender applicants and the general public on all aspects of public contracting cycle under the AGPO initiative.
- (iv) The State should investigate and prosecute corruption allegations in the AGPO process.

Social Protection

22. The Government through the Ministry of Labour and Social Protection and the National Council for Persons with Disabilities implements a cash transfer program for Orphaned and Vulnerable Children, Older Persons and Persons with Severe Disability.³⁰ The objective of the fund is to enhance the capacities of caregivers to provide care and improve livelihoods for persons with disabilities. Persons with severe disabilities receive Ksh2, 000 per household per month delivered every two months through appointed payment agents - currently the Kenya Commercial Bank and Equity Bank. However, the implementation of the cash transfer program has been fraught with delay and inconsistent disbursement of funds³¹ and complaints that the monies allocated are not sufficient to cater for the needs of persons with severe disabilities (making reference to persons with high support needs).³² The Kenya Integrated Budget Household Survey 2015/16 sets the derived poverty lines at Ksh3, 252 overall expenditure per month per person in the rural areas and Ksh5, 995 in urban areas.³³ The Ksh2, 000 allocated under the program falls way below the derived poverty line. The monies allocated do not take into account the differentiated cost of living and variations of poverty within counties. Furthermore, the criteria for determining beneficiaries is delegated to local administration officers chiefs and assistant chiefs instead of a designated committee where guidelines for allocation can be varied in favour of ineligible beneficiaries. There is also inadequate monitoring of the cash transfer program which would help identify officers failing to follow laid down guidelines in the cash transfer program.³⁴
23. State funded programs for social protection are largely inadequate due to lack of state funded support and assistance such as respite services, rehabilitation centers and day care for people with high support needs.³⁵ The lack of State funded support and community services has resulted in persons with high support needs being overly dependent on families which prevents persons with disabilities and their families from being economically active and being socially included. Absence of State funded support and assistance has also led to institutionalization and deprivation of liberty of persons with high support needs in the home by their families creating a ripe an environment for abuse and exploitation.³⁶ This is

in violation of article 14 and 19 of the Convention on the Rights of Persons with Disabilities.

Recommendation

- (i) The State review the budget allocation to cash transfer program to take into account the national derived poverty lines and differentiation of cost of living and variation of poverty levels per county.
- (ii) The State should enforce measures put in place to reduce irregularities and award of the cash transfer program to persons with severe disabilities.
- (iii) The State should provide support services and assistance that are responsive to the needs of persons with high support needs at the community level with a view to ensure social inclusion and to reduce poverty.

Poor inclusion of persons with disabilities and access to financial services offered by financial institutions such as banks, micro-finance institutions etc.

24. Financial services such as operating bank accounts and accessing credit are inaccessible to sections of persons with disabilities due to denial of legal capacity, which removes control over financial resources from the persons with disability to guardians.³⁷ This impedes their ability to participate fully in economic development and violates article 12 of the Convention on the Rights of Persons with Disabilities. Similarly, information on banking services is not available in easy to read formats, no sign language interpreters to support deaf persons in banks and there are no alternative communication methods.³⁸ This is in violation of article 9 of the Convention on the Rights of Persons with Disabilities.

Recommendation

- 1) The government to put in a place a mechanism for sensitizing the financial sector players on universal design principles and enforce compliance to improve accessibility to facilities, products and services provided by financial institutions in the country

Low access to employment opportunities in government by persons with disabilities.

25. The government is yet to meet the five percent employment quota for persons with disabilities in the public sector.³⁹ Data from the Public Service Commission indicates that of 251 institutions evaluated on inclusion of persons with disabilities in the financial year of 2017/18, only 10 institutions complied with the 5% requirement for employment of persons with disabilities.⁴⁰ The report further indicates that there are only 2, 155 persons with disabilities represented translating to 1.1% of the total number of persons in post.⁴¹ The limited representation still exist nine years after the promulgation of the new constitution in 2010.

Recommendation: The State comply with the requirement under article 54 (2) of the Constitution that at least 5% of members of government in elective and appointive positions are persons with disabilities.

ACCESS TO JUSTICE

Failure to implement existing laws that provide procedural accommodation for persons with intellectual disabilities during trial.

26. Kenyan law provides a range of accommodations aimed at enhancing access to justice for persons with disabilities. There has also been a marked shift towards emphasizing victim rights and their needs for example, Kenya passed the Victim Protection Act in 2014.⁴² Persons with disabilities who have different support needs are not accessing justice on an equal basis with non-disabled people, in the criminal justice system in Kenya.
27. Persons with disabilities do not receive the procedural or other accommodations, including communication accommodations they need to equally participate in criminal justice processes as victims of crime.⁴³ There is a failure to implement existing laws and policies that provide useful provisions on accommodations for people with intellectual disabilities. Such laws include:
- a) Article 50(7) of the Constitution which provides for the use of intermediaries and 54(1) (d) promotes the right of persons with disabilities to use ‘other appropriate means of communication.
 - b) Section 31 of the Sexual Offences Act which promotes a range of accommodations including ‘allowing a person with mental disability to give evidence under the protective cover of a witness protection box’.
 - c) The Sexual Offences Rules of Court which promote the use of technology in enhancing access to justice.

Recommendation: The state should fully implement provisions of the Constitution and the Sexual Offences Act & Rule which provide for accommodations for persons with mental disabilities.

Communication barriers and lack of reasonable accommodation in police stations which hinder persons with disabilities from reporting crimes.

Communication barriers and lack of reasonable accommodation at the police station further hinder persons with intellectual disability from reporting offences committed against them.⁴⁴ There is a specific gap on accommodations that touch on language and content. At the police station and in court, questions are often asked in complex and technical language.⁴⁵ Adjustments or adaptations are not made in communicating the notion of time, quantity, dates or place.

Recommendation

- (i) The State should provide accommodations to overcome communication barriers at the police station and in court.
- (ii) The State should train police officers on how to interrogate persons with intellectual disability.

Communication barriers and lack of procedural accommodations during trial which hinder persons with disabilities from giving evidence in court.

28. There is a failure to capture data on disability at the reporting stage, making it difficult to make necessary accommodations throughout the criminal justice system.⁴⁶ It is difficult to adequately accommodate an individual in court proceedings in circumstances where actors in the criminal justice system i.e. the judge/magistrate or prosecutor do not know that the witness has an intellectual disability. Further, prosecutors often fail to conduct adequate pre-trial processes which would assist in assessing and providing the rights accommodation, hence matching the right accommodation to the right victim becomes a daunting task.⁴⁷ The situation is further compounded by the lack of clarity regarding whose role it is to provide accommodations between the magistrate/judge and the prosecutor where the witness or complainant is a person with intellectual and psychosocial disability.⁴⁸

Recommendations

- (i) Actors in the criminal justice system should capture data on disability at reporting stage with the aim of providing the appropriate accommodations throughout the justice system.
- (ii) The State in collaboration with organizations for/of persons with disabilities should provide appropriate training to prosecutors and magistrates to ensure that they understand clearly their collective role with regard to providing accommodations.
- (iii) The State should implement and utilize the provisions in section 52 of the Evidence Act At the trial stage to take in expert opinion on the impact of the impairment on the testimony of a witness with an intellectual disability. This will clarify to the court exactly what kinds of accommodations a specific individual would require.

Violence against women and girls with disabilities.

29. Women and girls with disabilities in Kenya are subject to multiple and intersecting forms of discrimination on the basis of disability, gender, ethnicity, sexual orientation, religion, age, marital status etc. These multiple and intersecting identities limit their full enjoyment of human rights and fundamental freedoms on an equal basis with others.⁴⁹
30. Violence against women with disabilities has been on the rise in Kenya. A recent case involves a woman with a physical disability who was sexually assaulted and murdered in Machakos County.⁵⁰ Stigma and discrimination heightens the risk of violence, exploitation and abuse among women and girls with disabilities. Once women and girls with disabilities report cases of violence, police officers do not expedite the cases due to the negative attitudes, stereotypes and perceptions about persons with disabilities.⁵¹ Women and girls with disabilities in Kenya also face forced contraception and sterilization against them due to lack of informed consent regarding the medical procedures to be performed on them.⁵² Families of women and girls with disabilities liaise with medical practitioners and make decisions on their behalf to carry out forced sterilization. This is based on assumptions that women with disabilities cannot found a family and take care of children. Actions like forced contraception and sterilization are in violation of Article 23 of the CRPD that

recognizes the right of women with disabilities to decide freely on the number and spacing of children and to have access to age-appropriate information, reproductive and family planning education.

Recommendations

- (i) The State in conjunction with organizations of and for persons with disabilities should carry out advocacy, aimed at preventing and eliminating violence against women and girls with disabilities both at national and county level.
- (ii) The State should criminalize forced sterilization against women and girls with disabilities.

END NOTES

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- ¹ United Nations Convention on the Rights of Persons with Disabilities (CRPD). Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-9-accessibility.html>.
- ² Persons with Disabilities Act No 14 of 2003. Available at: <http://www.kenyalaw.org/lex//actview.xql?actid=No.%2014%20of%202003>.
- ³ Kenya National Commission on Human Rights ‘From Norm to Practice: A Status Report on Implementation of the Rights of Persons with Disabilities in Kenya (July 2014)’. Available at: https://www.knchr.org/Portals/0/EcosocReports/From%20Norm%20to%20Practice_Status%20Report%20on%20the%20Implementation%20of%20the%20Rights%20of%20PWDs%20in%20Kenya.pdf?ver=2018-06-06-182335-003.
- ⁴ Ibid Page 32.
- ⁵ Article 54 (1) of the Constitution of Kenya, 2010
- ⁶ Section 39 of the Persons with Disabilities Act, 2003
- ⁷ Ibid Page 35.
- ⁸ Ibid page 35.
- ⁹ Evidence Act CAP 80 Laws of Kenya. Available at: <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2080>.
- ¹⁰ To note is that the Sexual Offences Act allows Vulnerable witnesses to testify through intermediaries
- ¹¹ Art. 12 of the UNCRPD on Equal recognition before the law. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html> .
- ¹² Kenya National Commission on Human Rights and Open Society Initiative for Eastern Africa ‘How to Implement Article 12 of the Convention on the Rights of Persons with Disabilities Regarding Legal Capacity in Kenya : A Briefing Paper (2012)’. Available at: <http://www.knchr.org/Portals/0/GroupRightsReports/Briefing%20Paper%20on%20Legal%20Capacity-Disability%20Rights.pdf>.
- ¹³ Republic vs. John Mwangi Karubia No. 19 of 2016.
- ¹⁴ Cap 63 Laws of Kenya. Available at: www.kenyalaw.org/lex//actview.xql?actid=CAP.%2063.
- ¹⁵ See Table of Laws which outlines impugned sections of the constitution and different legislation containing derogatory language against persons with disabilities
- ¹⁶ Art. 28 of the Constitution of Kenya provides that every person has inherent dignity and the right to have that dignity respected and protected. Available at: www.kenyalaw.org/lex//actview.xql?actid=Const2010.
- ¹⁷ Ministry of Labour and Social Protection ‘National Action Plan on Implementation of Recommendation made by the Committee on the Rights of Persons with Disabilities in relation to the Initial Report of the Republic of Kenya September 2015 to June 2022 (May 2016)’. Available at: <http://laboursp.go.ke/wp-content/uploads/2018/05/National-Action-Plan-FINAL-draft-from-printer.pdf>
- ¹⁸ Special units established within the regular school to cater for learners with a specific type of disability
- ¹⁹ Danohue, D and Bornman, J. (2014). The challenge of realizing inclusion education in South Africa. South Africa Journal of Education 2014; 34(2)
- ²⁰ MoEST and VSO Jitolee (2016), *Kenya National Special Needs Survey Report*, Technical report, Nairobi: MoEST.
- ²¹ Ministry of Education (MOE) Sector Policy for Learners and Trainees with Disabilities (2018) pg. 30-31

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- ²² Public Procurement and Oversight Authority ‘Annual Report Financial Year 2015/16’ Available at: <http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> page 51
- ²³ Ibid page 51
- ²⁴ Public Procurement Oversight Authority ‘List of Enterprises Registered to Benefit from Public Procurement and Disposals Preference and Reservations (January 2018)’ Available at: http://www.ppoa.go.ke/images/downloads/AGPO/AGPO_LIST_AS_AT_4TH_%20MARCH_2019.pdf
- ²⁵ Ibid page 36
- ²⁶ Ministry of Labour and Social Protection ‘Speech by the Cabinet Secretary, Ministry of Labour and Social Protection, Hon Amb. Ukur Yatani during the Celebration of the United Nations International Day for Persons with Disabilities, Kisumu County’ (3rd December 2018) Available at: <http://laboursp.go.ke/wp-content/uploads/2018/12/CS-SPEECH-International-Day-of-Persons-with-Disabilities-Kisumu-county.pdf>
- ²⁷ Hivos People Unlimited ‘Kenya’s efforts to Empower Women, Youth and Persons with Disabilities through Public Procurement (2018) Available at: <https://east-africa.hivos.org/assets/2018/02/Agpo-Full-Report-Web-version.pdf> page 13
- ²⁸ See Report in Standards Newspaper ‘Women, Youth and Persons with Disabilities won State Tenders worth Kshs 56 Billion’ (4th July 2018) Available at: <https://www.standardmedia.co.ke/article/2001286617/women-youth-and-pwds-won-state-tenders-worth-sh56b>; See Hivos People Unlimited ‘Kenya’s efforts to Empower Women, Youth and Persons with Disabilities through Public Procurement (2018) Available at: <https://east-africa.hivos.org/assets/2018/02/Agpo-Full-Report-Web-version.pdf> page 41 where an interview with a procurement manager in Nairobi notes that, “Treasury does not have all the time to confirm if AGPO Certificate applicants are the bona fide owners. This means we have proxy AGPO suppliers”.
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<http://www.publicservice.go.ke/images/reports/Evaluation%20Report%20for%20the%20Year%202017-2018%20Values%202.pdf> page 33

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<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/VictimProtectionAct17of2014.pdf>

⁴³ Kenya Association for the Intellectually Handicapped ‘Access to the Criminal Justice System by Persons with Disabilities as Victims of Crime: Barrier and Opportunities’ (26 May 2016)

⁴⁴ Ibid pages 56, 61

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⁴⁶ Ibid page 69

⁴⁷ Ibid page 16

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⁴⁹ Gender and disability intersectionality in practice: Women and girls with disabilities addressing discrimination and violence in Africa, March 2018. Retrieved from https://www.makingitwork-crpd.org/sites/default/files/2018-06/MIW_GenderAndDisability_Report-June2018.pdf

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